

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LINWOOD CARE CENTER
Employer/Petitioner

and

Case 04-RM-145463

1199 SEIU UNITED HEALTHCARE
WORKERS EAST
Union

ORDER

The Employer's Request for Review of the Regional Director's dismissal of the instant petition raises no substantial issues warranting reversal of the Regional Director's action.¹ In dismissing the petition, the Regional Director found that the Employer failed to establish objective considerations in support of its petition based on his administrative investigation and parallel unfair labor practice charges filed by the Union in Cases 04-CA-146362, 04-CA-146670, and 04-CA-148705. Thereafter, on July 31, 2015, the Regional Director issued a consolidated complaint on those charges. As the Regional Director has found merit to the charges that challenge the circumstances surrounding the petition, and as the alleged conduct, if proven, directly affects the petition, the Regional Director properly dismissed the petition. NLRB Casehandling Manual Part Two, Section 11730.3(a).²

¹ In affirming the Regional Director, we find it unnecessary to rely on *SFO Good-Nite Inn, LLC*, 357 NLRB No. 16 (2011), *enfd.* 700 F.3d 1 (D.C. Cir. 2012). Instead, we rely on the NLRB Casehandling Manual Part Two, Sec. 11733.2(a)(1) and *Ron Tirapelli Ford, Inc.*, 304 NLRB 576, 579-580 (1991), *enfd.* in rel. part 987 F.2d 433 (7th Cir. 1993) (affirming the judge's nullification of election results and dismissal of the RM petition where the judge determined that the RM petition was tainted because of the employer's "unlawful conduct and coercive role in its solicitation and support for the employee petition" that was used to support its RM petition). Additionally, we do not rely on the Regional Director's finding that the alleged information request violation tainted the employee disaffection with the Union.

² Member Miscimarra agrees with his colleagues that the Regional Director did not abuse his discretion by dismissing the petition in this case, and Member Miscimarra notes that the petition is subject to reinstatement, if appropriate, after final disposition of the unfair labor practice charges. Member Miscimarra favors a reconsideration of the Board's blocking charge doctrine for reasons expressed in the dissenting views that were contained within the Board's representation election rule, 79 Fed. Reg. 74308, at 74430-74460 (Dec. 15, 2014) (dissenting views of Members Miscimarra and Johnson), but he acknowledges that the Board has declined to materially change its blocking charge doctrine.

MARK GASTON PEARCE,

CHAIRMAN

PHILIP A. MISCIMARRA,

MEMBER

KENT Y. HIROZAWA,

MEMBER

Dated, Washington, D.C., February 17, 2016.